IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1295 OF 2005
IN
SUIT NO.1904 OF 2005

Housing Development Finance Corpn.Ltd. ....Plaintiff
V/s.
Usha Rani & Ors. ....Defendants

Mr.H.N. Thakore i/b Thakore Jariwala & Associates for the Plaintiff.

Ms.Seema Chavan i/b Ms.Rakha Rajgopal for Defendant No.4.

CORAM : S.J. VAZIFDAR, J.
DATED : 21ST FEBRUARY, 2006.

P.C. :

1. The Plaintiff has filed this suit for recovery of the amounts lent and advanced to one A.K. Das and for enforcement of the security created by the said A.K. Das in respect of the said loan. Defendant Nos.1, 2 and 3 are the heirs of said A.K. Das. Defendant No.4 has been added on the basis that he is in occupation and/or is otherwise claiming a right in respect of the mortgaged flat.

2. This Chamber Summons has been taken out by Defendant No.4 to be deleted from the suit.

3. The Plaintiff claims to be the mortgagee in respect of flat No.1401. Defendant No.4 has in his affidavit in support stated that he claims no right, title and/or interest in respect of the flat No.1401. Defendant No.4 claims to be the owner of flat No.1402.

4. The question therefore that falls for consideration is whether irrespective of the numbers allotted to the flats, Defendant No.4 claims to be the owner of the mortgaged flat. By an order dated 24.1.2006, I appointed a Commissioner to see if this question could be determined.

5. The Commissioner has filed his report dated 31.1.2006. From the report, it is not possible to determine whether the flat of which Defendant No.4 claims to be the owner is the mortgaged flat. It appears that originally there was only one flat on the 14th floor. After the mortgage was created, two more flats were built on the terrace i.e. 14th floor. The Commissioner was informed by the office bearer of the society that the new flats have been given the numbers 1401 and 1403. Impliedly it would appear that the original flat on 14th floor was flat No.1402. However, mere numbering may not determine the issue. It may be possible for the Plaintiff to contend that

the flat of which the mortgage was created could only be the original flat on the 14th floor as the other flats had not been constructed at that time. It is true that in addition to that the Plaintiff may also have to establish that the said A.K. Das had a right which was capable of being mortgaged. These questions however, will require determination at the final hearing. It is not possible therefore to delete Defendant No.4 at this stage. It is pertinent to note further that as regards the documents relied upon by Defendant No.4, complete inspection has still not been given.

6. In the circumstances, the Chamber Summons is dismissed. The Commissioner’s costs are fixed at Rs.5000/-. The same shall be paid within two weeks from today by the Plaintiff in the first instance and subject to final decision at the hearing of the suit.